

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter)	
)	WC Docket No. 13-39
Rural Call Completion)	

COMMENTS OF COMPTTEL

COMPTTEL, through undersigned counsel, hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above captioned proceeding.¹ The Commission has been aware for far too long that an unacceptable number of long distance telephone calls to customers in rural areas are not completing and that such unreliable telephone service is adversely impacting public safety, businesses and consumers.² COMPTTEL supports the Commission’s commencement of this rulemaking proceeding to study the issue and to elicit comments on rules to address rural call completion problems. At the same time, COMPTTEL is concerned that although the Commission’s proposed reporting, record keeping and data retention requirements for call answer rates may confirm that a call completion problem exists in rural areas and may prove useful in monitoring the extent of the problem, they will not necessarily “ensure that telephone service to rural consumers is as reliable as service to the rest of the country.”³

The Commission has identified possible reasons for the high call completion failure rates to certain rural exchanges, including high access charges and originating providers’ use of

¹ *In the Matter of Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, FCC 13-18 (rel. Feb. 7, 2013) (“NPRM”).

² Rural Call Completion Workshop held October 18, 2011 available at <http://www.fcc.gov/events/rural-call-completion-workshop>; NPRM at ¶¶ 5-10.

³ NPRM at ¶13.

intermediate providers (least cost routers) that may fail to properly establish signaling and routing of calls such that calls loop between providers rather than terminate with the carrier serving the called party.⁴ Compounding the problem are the often erroneous messages transmitted to the calling party, such as ringing before the terminating carrier has signaled that the called party has been alerted to an incoming call, a busy signal when the line is not engaged or an announcement that the number dialed is not in service when in fact it is a working telephone number.⁵

I. Applicability of Record Keeping and Reporting Requirements

In an effort to more effectively monitor rural call termination and identify failure points, the Commission proposes to adopt call answer rate data retention and quarterly reporting requirements. The rules would apply to all originating long distance carriers (or the first facilities-based provider in a call delivery chain) that serve at least 100,000 subscribers, including local exchange carriers, interexchange carriers (“IXCs”), CMRS providers and interconnected VoIP providers.⁶

The Commission asks whether it can use its ancillary authority to reach VoIP providers on the ground that the rules are necessary for the Commission to carry out its section 201(b) and 202(a) obligations, 47 U.S.C. §§ 201(b), 202(a). COMPTTEL submits that the Commission

⁴ NPRM at ¶ 6; *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Declaratory Ruling, DA 12-154 at ¶ 6 (rel. Feb. 6, 2012).

⁵ NPRM at ¶ 2.

⁶ NPRM at ¶ 13. The Commission needs to take into consideration that not all local exchange carriers or originating interexchange carriers provide long distance service in every state. When a customer of an originating carrier calls a party located in a state where the originating carrier does not provide service, the originating carrier must hand the call off to an underlying IXC for delivery to the terminating carrier. In those circumstances, the originating carrier will know if a particular call was blocked by the IXC or was simply not answered. That information would have to be obtained from the underlying IXC.

should determine that VoIP services are telecommunications services to which all Title II obligations apply, making the use of its ancillary authority unnecessary. To the extent that the Commission prefers to continue to avoid addressing the classification issue, it must use its ancillary authority to subject VoIP providers to the same data retention and call termination reporting requirements and prohibitions against unjust, unreasonable and discriminatory practices that apply to other telephone service providers with which they compete.⁷ This is especially so in light of the Commission's recent decision to grant waivers of Section 52.15(d)(2)(i) of the Commission's Rules to allow Vonage and other over the top VoIP providers to obtain direct access to telephone numbers for a trial period.⁸ The Commission advised that the trial will provide real world data to resolve "any potential technical complications, such as routing" issues about which parties raised concerns.⁹ As noted, the Commission has already identified the failure to properly route calls to carriers in rural areas as a significant cause of call completion failure. Moreover, NECA has submitted test call data showing that over the top VoIP providers "maintain an unacceptably high overall call incompleteness rate of 30% and 'total

⁷ In the Universal Service/Intercarrier Compensation Reform Order, the Commission appropriately determined that over the top VoIP providers are subject to the Commission's no-blocking rules. *In re Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶ 974 (rel. Nov. 18, 2011). That determination has been challenged on appeal on the grounds that the Commission exceeded its authority by imposing no-blocking obligations on over the top VoIP providers. Voice on the Net Coalition, Inc. Principal Brief filed in the U.S. Court of Appeals for the 10th Circuit in Case No. 11-9900.

⁸ *In the Matter of Numbering Policies for Modern Communications*, WC Docket No. 13-97, Notice of Proposed Rulemaking, Order and Notice of Inquiry, FCC 13-51 at ¶¶94-208 (Rel. Apr. 18, 2013).

⁹ *Id.* at ¶94.

issues' rate greater than 50%.”¹⁰ If the Commission were to exclude over the top VoIP providers or their underlying carriers from the call answer rate data retention and reporting requirements, it will lack critical information it needs to monitor and resolve the rural call completion problem.

Originating long distance voice service providers or the first facilities-based provider in a call delivery chain that have 100,000 or less total retail long distance subscribers would not be subject to the Commission's proposed reporting and record keeping requirements.¹¹ The Commission asks whether the exclusion of providers with less than 100,000 subscribers would compromise its ability to effectively monitor rural call completion issues.¹² COMPTTEL submits that excluding smaller long distance providers from the record keeping and reporting requirements will not impair its ability to effectively monitor call completion rates. If, based on analyses of the data it receives, the Commission finds that some or all providers serving more than 100,000 subscribers do not have unacceptably high rural call completion failure rates but the problem continues to exist, it can then seek comment on applying the record keeping and reporting requirements to smaller providers.

II. Safe Harbors

COMPTTEL supports the Commission's proposed safe harbors that would relieve providers otherwise subject to the proposed rules from some or all of the data retention and reporting requirements.

¹⁰ Letter dated May 21, 2012 from Colin Sandy to Marlene Dortch filed in WC Docket No. 07-135 et al. at 2.

¹¹ NPRM at ¶ 17; Proposed Rule 64.2107.

¹² NPRM at ¶ 31.

A. Managing Intermediate Providers Safe Harbor

Under the first safe harbor, originating long distance providers would be relieved of all call completion data retention and reporting requirements. To qualify for the first safe harbor, a provider must certify on an annual basis that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating carrier.¹³ Limiting the number of intermediate providers that may handle a call limits the potential for lengthy call setup delays and looping. The contract restriction proposed by the Commission is consistent with one identified by ATIS as a useful tool for minimizing call termination problems.¹⁴

To qualify for the first safe harbor, the originating carrier must also certify that (1) any nondisclosure agreement it has with an intermediate provider permits the originating provider to reveal the identity of the intermediate provider to the Commission and to any rural carriers whose incoming long distance calls are affected by the intermediate provider's performance and (2) it has a process in place to monitor the performance of its intermediate provider in completing calls to individual rural telephone companies.¹⁵ Knowing the identity of any intermediate provider that is adversely affecting the quality or delivery of incoming long distance calls cannot help but assist terminating rural providers to resolve call termination problems with originating providers. It is reasonable to require originating providers that wish to be relieved of

¹³ NPRM at ¶33; Proposed Rule 64.2107(b).

¹⁴ Alliance for Telecommunications Industry Solutions, *Intercarrier Call Completion/Call Termination Handbook*, ATIS-0300106 at 29 (Aug. 2012) (some carriers have found it useful to limit underlying carriers to including no more than one additional provider (not including the terminating carrier) in the call).

¹⁵ NPRM at ¶ 33.

the reporting and data retention obligations to have a process in place to monitor the performance of any intermediate carriers they use. ATIS suggests that originating providers require their intermediate providers to meet Direct Measures of Quality for call completion and voice and fax quality and to report on their performance with the metrics established.¹⁶ With this information, originating providers can effectively monitor whether call answer rates for long distance traffic to rural areas for which the intermediate carrier is responsible are on a par with call answer rates for traffic terminating in non-rural areas, and if not, take steps to remedy the problem.

B. Monitoring Performance Safe Harbor

Pursuant to the Commission's proposed second safe harbor, originating long distance providers would be relieved of all reporting requirements but would have to retain call termination records for a period of three months.¹⁷ To qualify for the second safe harbor, an originating long distance voice provider would have to certify that for each of the previous 12 full calendar months, the provider has met the following performance standard:

the average of the call answer rates for all rural telephone companies as identified by Operating Company Number to which [the provider] attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rates for all calls [the provider] placed to non-rural LECs in the same month and the call answer rates for 95 percent of those rural telephone companies to which [the provider] attempted more than 100 calls were no more than 3 percent below the average of the rural call answer rate for all telephone companies to which [the provider] attempted more than 100 calls.

The provider would also have to certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls in one month.

¹⁶ *Inter-carrier Call Completion/Call Termination Handbook* at 30.

¹⁷ NPRM at ¶35; Proposed Rule 64.2107.

As the Commission acknowledged when it released the Notice of Proposed Rulemaking, originating providers often do not retain call completion records in the format or for the length of time proposed by the Commission.¹⁸ While the proposed data reporting and retention rules, if adopted, will require the retention of call completion records for six months, there is no such requirement today. To the extent that providers do not currently maintain call completion records in the format proposed by the Commission, it may be extremely difficult, if not impossible, for providers to make the certification in the proposed performance monitoring safe harbor during the first year even though their performance would otherwise qualify. For this reason, the Commission should modify the second safe harbor to provide that the initial certification need only apply to each of the previous 6 months, rather than 12.

III. Data Collection, Retention and Reporting Requirements

The Commission proposes to require originating facilities-based long distance service providers (1) to measure the call answer rate for each rural operating company number (“OCN”) to which 100 or more calls were attempted during a calendar month and the overall call answer rate for non-rural call attempts and (2) to submit this data to the Commission on a quarterly basis.¹⁹ The amount of information for each attempted call that the Commission is proposing that originating providers collect and retain in readily accessible form for a period of 6 months is substantial: (1) calling party number; (2) called party number; (3) date; (4) time; (5) an indication whether the call was handed off to an intermediate provider and if so, which provider; (6) an indication whether the called party number was assigned to a rural telephone company and if so, that company’s OCN; (7) an indication whether the call was interstate or intrastate; (8) and

¹⁸ NPRM at ¶13.

¹⁹ NPRM at ¶20.

indication whether the call was answered.²⁰ For originating providers that do not qualify for an exemption from the data retention and reporting requirements, compliance with these new information collection and retention requirements will be burdensome and expensive. And as noted above, call answer rate data may confirm the continuing existence of a problem with completing calls to rural exchanges, but it will not solve the problem. The Commission needs to focus on facilitating solutions. Toward that end, the Commission should consider requiring the rural carriers that are experiencing call failures to report on call flows of long distance calls within their own networks in an effort to better understand and eliminate possible bottlenecks.

In the meantime, COMPTTEL submits that the proposed 100 calls per month reporting threshold is more appropriate than a threshold tied to a percentage of a provider's overall call attempts. The Commission should include all call attempts in the threshold as opposed to only those attempted at peak periods.²¹ Providing call answer rates for all calls attempted is more likely to produce a more accurate picture of the originating provider's overall call termination success.

The Commission asks whether the proposed monthly measurement and quarterly reporting intervals are appropriate or whether weekly measurements are necessary to identify chronic call routing failures.²² COMPTTEL submits that monthly measurement and quarterly reporting intervals should be sufficient to identify chronic call routing failures. The data filed with the Commission will not be the only tool in the Commission's arsenal to monitor call routing failures. As the Commission noted, it has established a "dedicated email intake [to]

²⁰ *Id.* at ¶ 22 and Proposed Rule 64.2103.

²¹ NPRM at ¶ 21.

²² *Id.*

expedite[] the ability of rural telephone companies to alert the Commission of systemic problems receiving the calls from a particular originating long-distance provider and facilitate[] provider-to-provider resolution.” It has also been “addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to rural telephone customers is promptly restored.”²³ If the Commission determines at some point in the future that the monthly measurement and quarterly reporting requirements together with the input it receives from rural carriers and customers are inadequate to identify and correct chronic call routing failures, it can then solicit comment on whether weekly measurement requirements should be adopted. There is no reason to believe at this point, however, that monthly measurement and quarterly reporting intervals will not suffice.

The Commission asks whether the record keeping and reporting requirements should expire at the end of the intercarrier compensation reform transition period or at some other point in time.²⁴ The intercarrier compensation transition period does not expire until July 1, 2020 when rural access charges are required to be reduced to zero.²⁵ Rather than requiring all carriers that do not qualify for one of the safe harbors to retain and report call answer rate data for the next seven years, COMPTTEL submits that the Commission should exempt originating providers from further data retention and reporting requirements when the data filed for four consecutive quarters fails to demonstrate that their call routing practices cause significant call completion problems. For others, the Commission has already demonstrated that it can bring enforcement actions against providers that have less than acceptable call completion rates and levy substantial

²³ *Id.* at ¶11.

²⁴ *Id.* at ¶38.

²⁵ Section 51.909(j) of the Commission’s Rules, 47 C.F.R. §51.909(j).

monetary penalties not only for past call completion performance but also for failure to meet benchmarks in the future,²⁶ a powerful incentive to remedy any signaling or routing issues.

Any call termination information originating providers file with the Commission should be treated as confidential. Call answer rate data and the number of calls made by its customers per month to the customers of different rural telephone companies is competitively sensitive information that originating long distance providers generally would not make available to the public. For these reasons and the mandatory nature of the proposed filing requirement, the Commission should accord confidential treatment to the quarterly filings submitted by providers. *National Parks and Conservation Ass'n v. Morton*, 498 F. 2d 765 (D.C. Cir. 1974) (information involuntarily submitted to the government is confidential if disclosure likely to cause substantial harm to the competitive position of the person from whom information obtained).

IV. Ring Signaling Integrity

COMPTEL supports the Commission's proposed rule that would prohibit originating providers and intermediate providers from causing audible ringing to be sent to the calling party before the terminating provider has signaled that the called party is actually being alerted to an incoming call and that would require originating and intermediate providers to convey audio tones and announcements sent by the terminating provider to the calling party.²⁷ Such a rule is consistent with long time telephone industry practice and customer expectations. The misuse of ring backs, audio tones and announcements only serves to mislead the calling party and may

²⁶ *In the Matter of Level 3 Communications, Inc.*, File No. EB-12-IH-0087, Consent Decree, DA 13-371 (rel. Mar. 12, 2013).

²⁷ NPRM at ¶¶39-43; Proposed Rule 64.2201.

render call completion problems more difficult for the calling party's long distance provider to detect and correct.²⁸

Respectfully submitted,

/s/

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²⁸ *In the Matter of Developing a Unified Intercarrier Compensation Regime* at ¶ 13; *Intercarrier Call Completion/Call Termination Handbook* at 8.